

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

Decision, which is incorporated in its entirety in this decision and order by reference.¹

In its response, AIS argues that summary judgment should not enter because I did not adequately consider the Settlement Agreement and the fact that in that agreement ““Mr. Aoude reaffirm[ed] his existing indemnification obligation, including but not limited to his obligation to indemnify AIS in the [Preexisting Litigation].”” AIS Resp. 7 (emphasis omitted) (quoting Settlement Agreement ¶ 6). Noting that “[i]t is well-established that reducing a fraud-based litigation claim to a settlement agreement does not change the nature of the debt for nondischargeability purposes from fraud-based to contract-based,” AIS argues that the reaffirmed obligation of defense and indemnification by Mr. Aoude was an important economic term in the settlement of fraud claims and should be cloaked in any original fraud perpetrated by Mr. Aoude. AIS Resp. 7-9 (citing *Archer v. Warner*, 538 U.S. 314, 320 (2003)). AIS analogizes the settlement agreement obligations in this case to the promissory note given as part of a settlement of fraud claims in *Archer*. In that case, the Supreme Court concluded that the obligations represented by the promissory note retained the same character as the claims that had been settled. *Archer*, 538 U.S. at 323.

Unfortunately for AIS, extending that analogy to this case potentially only benefits PCFA, which is not a party to this adversary proceeding. As stated in the Memorandum of Decision, AIS was controlled by Mr. Aoude at the time of the underlying transaction—the Purchase Agreement—and thus AIS could not have been defrauded by Mr. Aoude at that time since his knowledge is imputed to AIS. AIS also suffered no damage because of Mr. Aoude’s alleged fraud, as the fraud allegations related to other aspects of the Purchase Agreement, not to the defense and indemnification of the Preexisting Litigation, and AIS was actually in a better

¹ Unless otherwise defined herein, capitalized terms shall have the meaning given them in the Memorandum of Decision.

position after the Purchase Agreement was signed because of the defense and indemnification provision relating to the Preexisting Litigation, as discussed in the Memorandum of Decision. Absent evidence of fraud in connection with the Settlement Agreement, Mr. Aoude reaffirming the defense and indemnification obligations did not create nondischargeable obligations to AIS where none existed prior to the settlement. While certainly it appears that PCFA may have possessed claims and apparent damages arising from Mr. Aoude's alleged fraud, which could form the basis of an objection to discharge of debt under § 523(a), AIS is not able to establish on this record that it suffered cognizable damages as a result of that alleged fraud. Contrary to the arguments made by AIS, no reasonable inference may be made that creates a genuine issue of material fact that could demonstrate relevant cognizable damages as to AIS. Further, whether PCFA would have negotiated different terms in the Purchase Agreement is relevant only to the damage claims that could only have been asserted by PCFA, and whether Mr. Aoude potentially prejudiced his credibility as a witness in the Preexisting Litigation is speculative and well beyond the contractual defense and indemnification claims asserted by AIS in this case.

Accordingly, judgment shall enter in favor of Mr. Aoude on the single cause of action set out in AIS's Complaint, incorporating both § 523(a)(2)(A) and § 523(a)(4).

Dated: April 11, 2022

By the Court,

A handwritten signature in black ink, appearing to read "Chris J. Panos", written over a horizontal line.

Christopher J. Panos
U.S. Bankruptcy Judge